IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.423 OF 1998.

Janabai Sopanrao Sadaphal : Appellant.

versus

Kamlabai Dharma Komnar & ors. : Respondents.

Mr.Hardas i/by Mr.P.N.Joshi for the appellant.

Mr.Mahadik i/by S.R.Singh for Respondent No.6 & 8

CORAM : D.G.DESHPANDE,J.

DATED : 28th February 2005.

ORAL ORDER

1. Heard the advocates for the appellant and the respondent Nos.6 and 8. This appeal is filed by the original owner of the truck which collided with a tanker on 24th February 1988 at 9.00 p.m.. The tanker and the truck, as per the case of the original claimants, were proceeding in the same direction. The tanker stopped suddenly. It had no tail lamps or break lights and, therefore, the

truck of the appellant, coming from behind, dashed against the tanker due to which the passenger who was travelling in the truck died.

2. The tribunal found that this was a case of contributory negligence and, fixed the negligence ratio as 40% upon the present appellant and, 60% upon the tanker. It is only on this point and also on the point of interest the present appeal has been filed.

3. The counsel for the appellant contended that if the tanker, which was proceeding ahead, stopped suddenly and, if it was a night time and the tanker did not have tail lamps or break lights, then dashing the tanker by the truck from the rear side could not be said to be the fault of the driver of the truck. In any case, according to him, the ratio fixed by the tribunal was not at all justified.

4. The counsel for the respondents, however, tried to contend that if the truck was following the tanker, the truck should have kept reasonable distance between his vehicle and the tanker. He further submitted that the ratio fixed by the

tribunal is proper and not required to be interfered with.

5. I am not at all convinced by the submissions made by the counsel for the respondents. If the tanker suddenly stopped in the midst of the road and if it did not have tail lamps or break lights, then the vehicle which was following the tanker was found to dash against the tanker. It is a known fact that if the highway or road is clear, the vehicles are going in speed and, if the tanker, which was going in speed, suddenly stopped, then it cannot be said that the driver of the truck was negligent to the extent of 40%. His negligence has to be reduced to the extent of 25% and the negligence of driver of the tanker has to be enhanced to 75%. Therefore, this appeal is required to be allowed to that extent.

6. The counsel for the appellant further contended that the interest at the rate of 12% awarded by the tribunal is exorbitant. I do not find any justification in reducing the interest. Only two aforesaid submissions were made. Therefore the appeal is required to be allowed

partly. Hence the order.

:ORDER:

The appeal is partly allowed.

The accident is the out come of contributory negligence and the negligence of the present appellant in the said accident is held to be 25% only as against 40% held by the tribunal.

As a result, the compensation awarded to the claimants will remain same.

The liability of the appellant will be restricted to 25% only.

If the appellant has deposited or paid more amount to the claimants, she will be entitled to receive back the difference of 15%.

No order as to costs.

Appeal disposed of accordingly.

[D.G.DESHPANDE]

28/02/2005 JUDGE.